

Peter Boettke on Robert Cooter's, "Market Modernization and Median Democracy: An Essay on Law and Economic Development."

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This is an excellent paper and one in which I find myself in substantial agreement with on the central points and the presentation of those points. My critical comments are therefore few.

First, Professor Cooter is one of the leading thinkers in law and economics and thus I raise this issue with some hesitation, but I think the author could usefully distinguish between two branches of law and economics – (a) Posner and (b) Coase. The way I would cut this distinction is as follows --- Posner provides an economic analysis of legal rules, while Coase examines how legal rules influence economic performance. Posner's way of thinking assesses the efficiency of rules using economic tools, Coase's way of thinking leads us to examine the processes of adjustment and adaptation within social life that lead to mutual gains being realized. The evolutionary dynamics in Cooter's work is more naturally comfortable with Coase's approach, while a more static equilibrium framework is the natural approach for a Posnerian inspired law and economics.

Second, the emphasis in Professor Cooter's work on political and legal decentralization is welcomed. The work of Rosenberg and Birdzell, *HOW THE WEST GREW RICH* is excellent on this issue of polycentricism. But the 'two swords' theory of political and legal competition is also developed extensively in Harold Berman's *LAW AND REVOLUTION*. Professor Cooter's work could benefit from addressing these historical discussions as well as the evolutionary norms literature he cites in fn. 67, and the literature on self-enforcement in fn. 69.

Third, I think Professor Cooter's discussion in his verbal comments on The Lord of the Rings and the paradox presented by the ring of power raises an issue which could be discussed in his paper --- Robustness of the institutions employed to constrain power. Hume argued that whenever we address politics we must assume that all men are knaves; on the other hand, Hayek argued that we must always address our ignorance. A robust theory of political economy, I contend, must seek institutional arrangements that constrain our knavery and enable us to cope with our ignorance. I have addressed this issue of robustness in the introduction to my *THE INTELLECTUAL LEGACY OF F. A. HAYEK*, but it is a theme in the work of Buchanan and also David Levy. A useful reference to Levy would be his paper from the *Journal of Legal Studies* on the Athenian lot system as a robust institution.

Finally, Professor Cooter's discussion of referendum and democratic stability was very interesting and promising for future research and policy advice. I am convinced that one of the biggest problems with the former socialist economies is not lack of democratic reform, but democratic reform of the wrong type. Professor Cooter might also want to address his argument to the findings of Robert Barro on democracy and provide an argument as to why his position of referendum democracy would not suffer the same

problems that bargaining democracy has with regard to the overall project of economic development.